REMARKS

Claims 145, 147, and 149-154 were pending in the application. Claim 154 has been canceled herein. Claims 145, 147, 149 and 152-153 have been amended herein. Claims 161-164 have been added herein. Support for the new and amended claims can be found throughout the specification and in the claims as originally filed. No new matter has been introduced.

Amendment or cancellation of claims should in no way be construed as an acquiescence, narrowing, or surrender of any subject matter. Applicants reserve the option to prosecute the originally filed claims or similar ones in the instant or subsequently filed patent applications.

Priority

The Examiner has maintained the objection to the instant claims for allegedly reciting limitations which were not clearly disclosed in the priority. Specifically, the Examiner states that U.S. Patent Applications 09/339,596 and 09/249,011 do not contain "sufficient written description for the claimed "(third) agents," including the negative limitation encompassing both "anti-CD40 antibody" and "anti-CD40 ligand antibody" as well as "calcineurin inhibitor," immunosuppressive agent that arrest the growth of immune cells," "transplant salvage pathway inhibitor," "IL-2 receptor antagonist" and "analogs"" (page 3 of the Office Action).

Applicants respectfully traverse the objection. However, in an effort to expedite prosecution and in no way conceding to the validity of the Examiner's rejection, Applicants have amended pending claim 145. As claim 145 no longer recites any third agents, Applicants submit that the Examiner's objection is moot and therefore respectfully request withdrawal of the objection.

Rejection of Claim 154 Under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claim 154 under U.S.C. § 112, second paragraph, as allegedly being "indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention." Specifically, the Examiner states that "claim 154 is indefinite in the recitation of "modulating" because the claim fails to state the function which is to be achieved."

Applicants respectfully traverse the objection. However, in an effort to expedite prosecution and in no way conceding to the validity of the Examiner's rejection, Applicants have canceled claim 154. Applicants therefore submit that the Examiner's rejection is moot and respectfully request withdrawal of the objection.

Rejection of Claims 145, 147, and 149-154 Under 35 U.S.C. § 102(f)

The Examiner has rejected claims 145, 147 and 149-154 under 35 U.S.C. § 102(f) because, according to the Examiner, "the applicants did not invent the claimed subject matter." Specifically, the Examiner states that "the Gray Declaration does not account for the contribution of the co-inventors, given that conception appears to have [been] solely attributed to Gray himself."

Applicants respectfully traverse the rejection. The Gray Declaration under 37 C.F.R. § 1.132 states that "I [Gary S. Gray] am co-inventor in the above-referenced patent application, along with co-inventors Man Sung Co, Maxmiliano Vasquez, Beatriz Carreno, Abbie Celniker, Mary Collins, Samuel Goldman, Andrea Knight, Denise O'Hara, Bonita Rup, Geertruida Veldman, Garvin Warner and Stuart Friedrich." Thus, the Gray Declaration does not assert that Gary S. Gray was the sole inventor of the instant invention. However, in order expedite prosecution, applicants submit herewith a second Declaration under 37 C.F.R. § 1.132 by Dr.

Gray. The second Declaration states that Dr. Gray contributed to the conception of the present invention along with co-inventors Man Sung Co, Maxmiliano Vasquez, Beatriz Carreno, Abbie Celniker, Mary Collins, Samuel Goldman, Andrea Knight, Denise O'Hara, Bonita Rup, Geertruida Veldman, Garvin Warner and Stuart Friedrich. Applicants submit that the claimed inventorship of the present application is correct and therefore respectfully request withdrawal of the rejection.

Rejection of Claims 145, 147, and 154 Under 35 U.S.C. § 102(e)

The Examiner has rejected claims 145, 147 and 154 under 35 U.S.C. § 102(e) as allegedly being anticipated by Freeman *et al.* (U.S. Patent No. 6,605,279). Specifically, the examiner states that "Freeman *et al.* teach methods of downregulating or suppressing T cell mediated responses, including the use of B7-1 and B7-2-specific antibodies in conjunction with other suppressive agents, including cyclosporine A or FK506, including its usefulness in situations of tissue and organ transplantation as well as GVHD" (page 9 of the Office Action).

Applicants respectfully traverse the rejection. However, in an effort to expedite prosecution and in no way conceding to the validity of the Examiner's rejection, Applicants have amended independent claim 145 to state "wherein the humanized immunoglobulin specific to B7-1 comprises a constant region of human origin and a variable region, wherein said variable region comprises: a) one or more complementarity determining regions derived from the 1F1 mouse monoclonal antibody (ATCC Accession No. PTA 263) and b) one or more framework regions of human origin." Freeman *et al.* does not disclose or suggest the use of a humanized immunoglobulin specific for B7-1 as claimed in the instant application. Furthermore, the humanized immunoglobulin specific to B7-1 of claim 145 was determined to be free of the prior art in U.S. Application No. 09/339,596 (now U.S. Patent No. 6,913,747, see claim 7), to which

the present application claims priority. Applicants therefore submit that the claims are not anticipated by Freeman *et al.* and respectfully request withdrawal of the rejection.

Rejection of Claims 145, 147, and 154 Under 35 U.S.C. § 102(b)

The Examiner has rejected claims 145, 147 and 154 under 35 U.S.C. § 102(b) as allegedly being anticipated by Freeman *et al.* (WO 95/03408). Specifically, the examiner states that "Freeman *et al.* teach methods of downregulating or suppressing T cell mediated responses, including the use of B7-1 and B7-2-specific antibodies in conjunction with other suppressive agents, including cyclosporine A or FK506, including its usefulness in situations of tissue and organ transplantation as well as GVHD" (page 10 of the Office Action).

Applicants respectfully traverse the rejection. However, as described above, in an effort to expedite prosecution and in no way conceding to the validity of the Examiner's rejection, Applicants have amended independent claim 145 to state "wherein the humanized immunoglobulin specific to B7-1 comprises a constant region of human origin and a variable region, wherein said variable region comprises: a) one or more complementarity determining regions derived from the 1F1 mouse monoclonal antibody (ATCC Accession No. PTA 263) and b) one or more framework regions of human origin." Freeman *et al.* does not disclose or suggest the use of a humanized immunoglobulin specific for B7-1 as claimed in the instant application. Furthermore, the humanized immunoglobulin specific to B7-1 of claim 145 was determined to be free of the prior art in U.S. Application No. 09/339,596 (now U.S. Patent No. 6,913,747, see claim 7), to which the present application claims priority. Applicants therefore submit that the claims are not anticipated by Freeman *et al.* and respectfully request withdrawal of the rejection.

Rejection of Claims 145, 147, and 149-154 Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 145, 147 and 149-154 under 35 U.S.C. § 103(a) as allegedly "being unpatentable over Freeman *et al.* (U.S. Patent No. 6,605,279) or Freeman *et al.* (WO 95/03408) in view of the well known use of immunosuppressives such as cyclosporine, FK506 and rapamycin and effective therapeutic antibody dosages in transplantation therapeutic regimen at the time the invention was made, as taught by de Boer *et al.* (U.S. Patent No. 5,757,034" (page 11 of the Office Action).

Applicants respectfully traverse the rejection. However, as described above, in an effort to expedite prosecution and in no way conceding to the validity of the Examiner's rejection, Applicants have amended independent claim 145 to state "wherein the humanized immunoglobulin specific to B7-1 comprises a constant region of human origin and a variable region, wherein said variable region comprises: a) one or more complementarity determining regions derived from the 1F1 mouse monoclonal antibody (ATCC Accession No. PTA 263) and b) one or more framework regions of human origin." Neither Freeman *et al.* (U.S. Patent No. 6,605,279), Freeman *et al.* (WO 95/03408), nor de Boer *et al.* teach or suggest the use of a humanized immunoglobulin specific for B7-1 as claimed in the instant application. Therefore,

Freeman *et al.* (U.S. Patent No. 6,605,279), Freeman *et al.* (WO 95/03408), and de Boer *et al.*, either alone or in combination, do not render the instantly claimed invention obvious and Applicants respectively request that the Examiner withdraw the rejection.

Obviousness-Type Double Patenting Rejections

Claims 145, 147 and 149-154 are rejected under the judicially created doctrine of obviousness-type double patenting, as allegedly being unpatentable over claims 1-61 of U.S. Patent No. 6,827,934 and claims 1-18 of U.S. Patent No. 6,984,383.

Applicants respectfully request that the Examiner hold in abeyance all obviousness-type double patenting rejections until allowable subject matter is indicated.

CONCLUSION

Early and favorable reconsideration of the application is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at (617) 832-1000. If any fees are due, the Commissioner is hereby authorized to credit any overpayment or charge any deficiencies to **Deposit Account No. 06-1448, WYS-004.01.**

Respectfully submitted,
FOLEY HOAG

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